

4 CHAIRMAN KHOURI: Okay. We will
5 reconvene at 2:30 with our panel of
6 intermediaries. Madame Secretary, introduce them
7 and we'll get started.

8 MS. DICKON: Thank you. I will. We'll
9 begin today with Mr. Richard Roche, who will be
10 followed by Charles Riley, Jeannette Gioia,
11 Cameron Roberts, Joseph Quinn, and Brian Vickers.

12 You can begin.

13 MR. ROCHE: And I'd like to be able to
14 shorten the proceedings but just saying ditto
15 (laughter), I agree with just about everything
16 said here today and hope not to repeat much of it.
17 I've shortened my prepared remarks just to do
18 that.

19 My name is Rich Roche; I'm the Vice
20 President of International Transportation at
21 Mohawk Global Logistics. I also serve as Chairman
22 of the NVOCC Subcommittee at NCBFAA, a role I've

1 held for the past eight years. And I speak here
2 today not just as an active NVO, but as the voice
3 of many small to medium sized NVOs that are part
4 of our membership and for the customers who
5 ultimately bear the brunt of unexpected costs.
6 I've been in the industry for just about 40 years,
7 first sailing on cargo ships, working on the
8 carrier side, and shifting to the NVO side 24
9 years ago.

10 I'm here today not to eliminate
11 demurrage and detention -- I'll just refer to it
12 as D&D to keep it shorter -- but rather to seek a
13 solution that such charges may be applied fairly
14 with more transparency in their application and
15 more standardization where additional free time
16 should be granted. As an active NVOCC Mohawk
17 regularly works within the confines of standard
18 free time, four days to evacuate containers from
19 the pier, two days from the rail ramps. Our
20 clients expect us to pull their containers within
21 free time so as to avoid D&D charges, otherwise we
22 would pull and store them off dock. We understand

1 that D&D as it exists today is designed to
2 incentivize rapid pick up and return of containers
3 with punitive consequences for those that don't
4 perform. That system works most of the time.

5 It's the deviation from the norm that
6 becomes the basis for our complaint. Congestion
7 from any cause, labor system crash, vessel
8 bunching, and weather, or terminal glitches, like
9 lost containers, closed sections of the yard, and
10 in some cases equipment shortages, may contribute
11 to D&D being assessed unfairly due to
12 circumstances beyond our control.

13 We talked a lot about congestion, so
14 I'll keep this brief. When caught in a heavy
15 congestion scenario it is extremely difficult, if
16 not impossible, to find anyone at the carrier or
17 the terminal to negotiate extended free time.
18 When we do get somebody they might argue that the
19 line is not six hours long because they only see
20 two hours of the backup. But meanwhile our
21 trucker's geofence shows him slowly advancing in
22 line wrapped around to the other side of the port.

1 There's an interesting difference in the point of
2 view of those collecting the charges and those
3 paying.

4 We have an agreement with our house
5 drayman to pick up 25 containers a day at the Port
6 of New York. If we have 100 containers arrived
7 with first availability on Monday we can get them
8 all out by Thursday and we don't incur demurrage
9 in those cases. But when there's a problem at the
10 terminal on Monday and we can't get 10 of those
11 containers out on that day without making other
12 arrangements, we'll be in 10 days of demurrage by
13 Friday. And if we have 10 containers each day
14 that we don't pick up through the course of the
15 week we'll have 40 containers in demurrage on
16 Friday. And in these periods of congestion there
17 are no other drayman to go to. They're all in the
18 same situation. So we're stuck. We just have to
19 get that pushed out and there's no control that we
20 have over collecting those containers.

21 Commissioner Dye's report on supply
22 chain highlighted the disconnect between MTOs,

1 carriers, and shippers. Certainly there is a
2 disconnect. We're left to beg for refunds after
3 the fact because we don't have a voice at the
4 table. And when we beg many times this falls on
5 deaf ears.

6 We've heard a lot today about congestion
7 and the variety of situations that are caused
8 through congestion, but I want to talk a little
9 bit more today about the daily day to day problems
10 that we have that are not congestion related. And
11 I'll give you an example. I have one live
12 situation working right now, our trucker got
13 availability for our container on the West Coast
14 terminal in mid-November, but the first available
15 appointment was four days into demurrage. The
16 trucker began an appeal for extended free time
17 with the terminal, but had to pay the demurrage on
18 the day of the dray appointment because the
19 extended free time was not granted until later
20 that day. And this is cash on the barrelhead.
21 When he got there the container could not be
22 located for a couple of hours and so he was

1 terminated from the terminal. He was escorted
2 out. He then went back onto the line to apply for
3 the demurrage again -- or to apply for an
4 appointment again. He was also put in four days
5 of demurrage; prepaid those charges and then went
6 to get the container for a second time. At that
7 point he went to the spot that they assigned him
8 for the container, demonstrated to the terminal
9 that it wasn't there, and went out again out of
10 the terminal. Third time was the charm. He was
11 able to collect the container, though no clear
12 response was given on extension of free time
13 again. And we're still trying to get a refund of
14 \$1700 in demurrage paid by the trucker.

15 We talked earlier this morning about
16 risk and demurrage notwithstanding, we assumed
17 risk in this case with additional costs of two
18 weeks of delay, truck waiting time in the terminal
19 both times, and two dry runs. That's the risk on
20 our side that we have to bear in addition, very
21 likely, to demurrage. I'm still waiting to have
22 this \$1700 refunded.

1 Getting back to congestion, we polled
2 our membership at NCBFAA about statements made by
3 MOL in this proceeding regarding its ability and
4 willingness to negotiate demurrage and detention.
5 Our association had 89 responders to this survey,
6 that's about 10 percent of our members. 93
7 percent of them said they have been assessed
8 demurrage and detention charges in periods of
9 congestion, 94 percent of the respondents did not
10 agree that MOL worked out an acceptable
11 arrangement or compromise, and 89 percent
12 indicated the same for the rest of the industry,
13 in other words, that they were not able to work
14 out an acceptable arrangement or compromise to
15 mitigate demurrage and detention charges. The
16 reality is there's little incentive for the
17 carriers or MTOs to want to change the current
18 process. It remunerates then when the delays are
19 caused by the shipper, trucker, or NVOCC, and
20 rightfully so. When the carrier or terminal is
21 the cause of the problem, however, they can simply
22 stand behind their tariffs to print money with no

1 incentive to fix the problems or even entertain
2 the arguments. Further, they have unilateral
3 power to decide who pays and who gets absolved
4 after the fact. This has to change.

5 We agree with the remedies proposed by
6 the Coalition so that there's some equitable shift
7 of burden in these cases. In our view, the FMC
8 should issue an interpretive rule so that triggers
9 are established that automatically extend free
10 time for certain causes. Carriers are not
11 permitted to hold up container release when claims
12 are asserted only to add even more demurrage, and
13 that the punitive portion of demurrage charges be
14 rescinded in force majeure cases.

15 In conclusion, the status quo is unfair,
16 patently discriminatory and burdensome at best.
17 We would like to see the Commission put the burden
18 on carriers and MTOs to justify detention and
19 demurrage costs when the importer, exporter, and
20 their agents, are not at fault. And we would also
21 ask the Commission to consider exempting detention
22 and demurrage charges and tariffs from the

1 Shipping Act so that they cannot be enforced under
2 Filed-Rate Doctrine.

3 Thank you for your time.

4 MR. RILEY: Good afternoon. I'm Charles
5 Riley; I'm the Chairman of the NY/NJ Foreign
6 Freight Forwarders & Brokers Association and also
7 Vice President of John A. Steer Company. And I
8 will be giving a joint statement also with Miss
9 Jeannette Gioia, who is our Vice President of the
10 NY/NJ Foreign Freight Forwarders & Brokers
11 Association.

12 Acting Chairman Michael Khouri,
13 Commissioner Rebecca Dye, Commissioner Daniel
14 Maffei, and Federal Maritime Commission Staff
15 Experts, good afternoon, and thank you for
16 allowing us the opportunity to comment on the
17 rulemaking issue raised by the Fair Port Practices
18 Coalition. The NY/NJFFFBA celebrated its 100th
19 anniversary this year as one of the oldest U.S.
20 trade associations for licensed OSHA freight
21 forwarders, NOVCCs, and customs brokers. It has
22 100 regular members and 25 industry related

1 affiliate members, ranging from the largest global
2 logistics carriers to the smallest mom and pop
3 shops. All these companies operate on a daily
4 basis facilitating the movement of imports and
5 exports through any port in the United States.

6 Our comments today will largely focus on
7 those issues in the Port of New York and New
8 Jersey where our membership is located and the
9 support for FMC guidance on what will constitute
10 unreasonable practices in assessing demurrage,
11 detention, or per diem. They are provided in the
12 context of a strong belief in the role of
13 competition and the effectiveness of commercial
14 solutions to business problems. Our members'
15 interest in having the FMC provide guidance on
16 this issue stems from a deep frustration that a
17 full market solution is not possible. The
18 economic structure in the Port of New York and New
19 Jersey is more characteristic of an oligopoly
20 rather than a competitive market. In the
21 oligopoly barriers to entry are high, thus
22 restricting the number of companies providing

1 services and limiting pricing flexibility. In New
2 York New Jersey Port over 3.6 million general
3 cargo containers are moved through 5 main terminal
4 operators. The shipper/receiver does not have a
5 choice of which terminal to use. This is
6 determined by the steamship line. While there are
7 32 steamship lines calling New York and New Jersey
8 Port this number is significantly reduced for any
9 particular port pair. This structure supports and
10 inflexibility in pricing and service options that
11 allows the shipper/receiver to be assessed charges
12 even in circumstances when they are not in control
13 of the cargo. Our membership believes they should
14 not be responsible for the payment of demurrage
15 and detention in situations when their ability to
16 move the cargo is clearly outside their control.
17 The NY/NJFFFBA has polled its members and found
18 strong approval of the need to clarify what would
19 be considered unreasonable assessments. We had
20 over 70 percent response for our regular
21 membership. This would be on the high end of
22 survey completion rates and indicative of the

1 intense interest in this issue. Even some of our
2 affiliate members answered to the survey.

3 MS. GIOIA: We asked just a couple of
4 questions because we really were trying to
5 understand how deep the problem is. And the focus
6 was always on what was reasonable, what was
7 unreasonable, because we fully understand the
8 importance, the needs for steamship lines,
9 terminals to be reimbursed for use of the
10 equipment and space, but what we've all suffered
11 is a situation that is actually out of control.

12 So we asked a question, should the FMC
13 establish a rule with a policy statement
14 clarifying when the assessment of demurrage and/or
15 detention would be considered unreasonable in
16 circumstances that are beyond the control of the
17 shippers, the receivers, the motor carriers, and
18 prevents them from picking up or delivering cargo.
19 So we were really only focused in those instances
20 of unreasonableness. We have 100 members, regular
21 members, we had more than 70 percent, as Charles
22 pointed out, responding. This is a high number

1 for a survey.

2 Seventy-two out of 74 answered yes, yes,
3 the FMC should establish a policy statement. In
4 the 3 instances amongst our regular members where
5 they said no, 2 of the companies had actually not
6 been experiencing any kind of a problem in this
7 area; 1 of the 2 respondents is 1 of the top 10
8 global logistics companies and they actually said,
9 not surprisingly, the terminals are cooperative.
10 So we'd like to really bring to the attention of
11 the Commission that the current system is
12 inherently skewed against companies that do not
13 have the negotiating leverage with the ocean
14 carriers and the terminals to reduce or eliminate
15 the demurrage. And these are charged per tariff
16 rules and rates. And often that is exactly the
17 way it's expressed to our community.

18 Second question that we asked was have
19 your company or your clients had to pay demurrage
20 and/or detention charges in the Port of New York
21 or New Jersey when equipment could not be picked
22 up or dropped off. Again, the emphasis was due to

1 circumstances beyond your control. And we divided
2 it up. We asked prior to 2017, 63 responded yes
3 out of the 74. And then we asked during this past
4 year, 2017, 49 responded yes. So there was a
5 reduction. What we found interesting was that
6 among the members that had not experienced
7 problems with being unfairly charged demurrage and
8 detention there still was support for a
9 clarification on what would constitute an
10 unreasonable charge.

11 The comments indicated that companies
12 are also experiencing unreasonable assessments at
13 other U.S. ports. So we were asking them the
14 question in terms of New York and New Jersey and
15 some hadn't experienced it but they had also
16 experienced it at other ports.

17 Survey results show that the assessment
18 had diminished, had lessened in 2017. We actually
19 believe in part that is a direct reflection of the
20 very existence of this Petition submitted by the
21 Coalition For Fair Port Practices. It actually
22 even had some effect in mitigating circumstances

1 that arose in 2017 and how there was a response on
2 the part of the terminals and the carriers. Even
3 though members commented that the terminals are
4 showing more flexibility they've also pointed out
5 the ongoing challenges of moving the cargo
6 efficiently through the port as the trade volumes
7 have grown and the size of the ships discharging
8 the cargo have gotten larger and larger. So it's
9 not a one-off problem, it's something that is
10 continuing.

11 The issues that the members expressed in
12 terms of under what conditions they were
13 experiencing unreasonable detention and demurrage,
14 it related to port congestion created by
15 extraordinary events, the weather, labor, computer
16 failure, government action. Many, many of our
17 members expressed a lot of situations where
18 customs examinations related both to import and
19 export shipments, they found it very frustrating
20 that steamship lines are charging for the
21 equipment usage when containers are moved off the
22 New York New Jersey Port into one of the few

1 central examination sights. Before the CES system
2 was put in place, and when the examinations were
3 being done actually on the terminal, steamship
4 lines were not charging for the equipment usage.
5 The clock would only start after the government
6 released from an exam. Substantial costs are now
7 accruing. As soon as those containers exit the
8 terminals they're going to the CESs, the steamship
9 line equipment charges kick in. The importer has
10 absolutely no control over when or where the cargo
11 will be examined and we believe they should not be
12 in a position to bear the punitive extra costs.

13 In addition, other areas that were cited
14 causing for detention and demurrage, lack of
15 equipment, truckers -- we had instance, member
16 said trucker was not able to pick up at a terminal
17 because there were no gensets available. And this
18 truck was on the line then finally left, left the
19 terminal. No gensets. A genset came free,
20 trucker goes back on the line. It was already too
21 late and free time was charged in that instance.
22 Also there are inability to obtain a terminal

1 appointment, which moves into the expired time.
2 And then steamship lines delaying or changing
3 action, which leads to demurrage for goods at the
4 terminal, at the arrival terminal or at the rail
5 yard. In fact, just prior to coming into the
6 meeting Charles' phone lit up with exactly an
7 example of a situation at the rail yard.

8 MR. RILEY: Yes, what happened was there
9 was inland move to an inland terminal hatching to
10 Columbus, Ohio. My company, which was a customs
11 broker, cleared the shipment before it even hit
12 Norfolk, we send out the delivery information to
13 the carrier before it even got to Norfolk, so they
14 had plenty of time to be able to issue the
15 delivery instructions before the container even
16 arrived in Columbus, Ohio. We then received
17 information from the steamship line to be able to
18 guarantee five days of demurrage at the rail head
19 because they could not have the truck power to be
20 able to move it out of the rail yard. Now, we
21 find that really hard to believe when we gave them
22 instructions way beforehand. What our

1 understanding is that it is possible, since I
2 don't work for the steamship line, but that their
3 SOP is that they issue the instructions to the
4 motor carrier, they don't hand them out until the
5 trailer is actually available at the rail yard.
6 So you only have two days to be able to pick it
7 up. So they put us in the BCO, they really put
8 the BCO at a disadvantage. And, you know, a lot
9 of this comes down when you hear the testimony
10 before us in the last session that, you know, the
11 risk -- when these containers come in the risk is
12 all thrown -- as Rich said, the risk is all on the
13 BCO. So even if there's a weather related
14 incident or any other information, you're in
15 business, you have to accept a certain amount of
16 risk being in business. And it seems like all the
17 risk for these containers is thrown onto the BCOs.
18 The line doesn't want to accept any and the
19 terminals don't want to accept any.

20 So, basically, the NY/NJ Foreign Freight
21 Forwarders & Brokers Association favors the FMC
22 providing additional clarification and

1 interpretation of what would be considered an
2 unjust and unreasonable practice and not allowable
3 under Section 10D of the Shipping Act of 1984.
4 Thus our membership is in agreement with the pro
5 statement policy and the Fair Practices Petition,
6 Exhibit A, that ocean common carriers and marine
7 terminal operators will be acting unreasonably if
8 they are unable to tender the cargo for delivery
9 and/or to receive equipment due to circumstance
10 beyond the control of the shipper. This would
11 mean that (1) free time should be extended if the
12 occurrence preventing cargo delivery or equipment
13 receipt happens within the free time. Also, that
14 the free time should be granted for the period in
15 which occurrence happens even if the free time has
16 expired.

17 In conclusion, the NY/NJ Foreign Freight
18 Forwarders & Brokers Association supports the
19 Petition's comment that the FMC guidance on
20 detention and demurrage practice to ensure that
21 ocean common carriers and marine terminal
22 operators use these charges as intended and to

1 find incentive for the efficient handling of cargo
2 and equipment and not as an additional revenue
3 source. Our membership supports the FMC
4 establishing a rule or guidance to help clarify
5 when the assessment of demurrage and/or detention
6 would be considered unreasonable in circumstance
7 beyond the control of the shippers, receivers, and
8 carriers and preventing them from picking up or
9 delivering cargo to terminals. The current system
10 does not have sufficient checks and balances to
11 ensure that demurrage and detention are properly
12 assessed. FMC guidance on what is unreasonable
13 will assist in providing such a check.

14 The NY/NJ Foreign Freight Forwarders &
15 Brokers Association would like to thank the
16 Commission for the opportunity to express our
17 strong feelings of our membership on this issue
18 and the hope that a more reasonable practice will
19 result. This can only help facilitate the trade.
20 I would like to remark that -- to quicken the
21 timeframe -- there are also instances that we also
22 have in here that we can also address at a later

1 time that, you know, state instances that have
2 happened to our members so that you understand
3 what's going on, because really recently within
4 the last couple of weeks because of weather issues
5 and all, it's really compounded the problem where
6 there's a lot of congestion in the Port of New
7 York New Jersey.

8 MS. GIOIA: Thank you.

9 CHAIRMAN KHOURI: Thank you. And as I
10 said in the beginning, every witness should feel
11 free to supplement answers and whatnot post
12 hearing, so.

13 MR. RILEY: Thank you.

14 MR. ROBERTS: Thank you, and good
15 afternoon, Chairman Khouri, Commissioner Dye, and
16 Commissioner Maffei. On behalf of the Foreign
17 Trade Association and Roberts & Kehagiaras LLP, I
18 want to thank the Commission for holding this
19 hearing and accepting our request to provide
20 witness testimony on the assessment of demurrage,
21 detention, per diem charges during the period of
22 port congestion.

1 My name is Cameron Roberts; I am the
2 Foreign Trade Association's Chairman and a partner
3 at Roberts & Kehagiaras LLP. As a native Southern
4 Californian you commute to the Port on a daily
5 basis -- I know what traffic looks like. You
6 think you know what traffic is, come to LA and I
7 can show you. And I can assure you that I know
8 what port congestion looks like. I've seen it out
9 my window on a daily basis during the period of
10 congestion last, looked at it from the Vincent
11 Thomas Bridge, and all I can tell you is that what
12 it looks like is dozens and dozens of ships
13 sitting at anchor and thousands of trucks all
14 waiting, waiting, and waiting. They're waiting
15 for someone to take action, and we hope that the
16 FMC is the appropriate party to take that action.

17 The FMC members are part of a \$1.4
18 trillion logistics industry equaling 8 percent of
19 the annual gross domestic product of the United
20 States. Founded in 1919 the FTA's membership
21 reflects the logistics industry as a whole,
22 including freight forwarders, NVOs, customs

1 brokerage, drayage operators, importers,
2 exporters, and the like, who like the FMC are
3 committed to encouraging just an efficient and
4 reliable ocean trade transportation system. I am
5 here today because port congestion delay and the
6 assessment of these charges that we've been
7 discussing during periods of congestion have
8 created huge inefficiencies in the marketplace,
9 putting ocean logistics industry at risk, damaging
10 the credibility of the United States' importers,
11 exporters, and our ability to compete in a fair
12 and free trade environment that we seek to
13 participate in.

14 The OTIs and their customers, the
15 American importer and exporter, rely, and
16 righteously, on the custodial carrier and the
17 terminal operator. If Chairman Khouri would dust
18 off that book of Gilmore and Black he would
19 concur, I'm sure, that the carrier has an
20 obligation under the general common law and under
21 statute to deliver the goods on a fit and proper
22 wharf. A fit and proper wharf is one that

1 operates with a reasonable efficiency. That duty
2 is not being discharged and that is why we are
3 here today. In the Ports of Los Angeles and Long
4 Beach port congestion is a byproduct largely of
5 terminal negotiations, vessel alliances, and
6 divestment of the custodial carriers in intermodal
7 equipment. These are the primary issues.

8 It is undisputed that the Shipping Act
9 prohibits a custodial ocean carrier or marine
10 terminal operator from engaging in an unjust and
11 unreasonable practice. And, thus, you have the
12 authority to involve the Commission in giving
13 guidance. The collection of charges in the midst
14 of port congestion is an unjust unreasonable
15 practice, especially if the gate is closed. This
16 would also be a violation of California law.
17 However, the gate closure issue has begun a shell
18 game and the open for business sign is an illusion
19 fraught with frustration, commercial
20 impossibility, and outright refusal by terminal
21 operators to interchange containers even when they
22 have valid appointments. Despite these known

1 causes of port congestion, custodial ocean
2 carriers and terminal operators have continued
3 these practices despite flagrant violations of
4 both policy and law. The practice of collecting
5 these charges during port congestion encourages
6 future congestion and unjustly and unreasonably
7 shifts the costs of the inefficiency of the
8 terminal on the OTI.

9 If you believe that they do have the
10 duty to deliver and on a fit and proper wharf,
11 this cost shifting should be reflected not in
12 demurrage assessed after the fact, but in the
13 underlying rate. This is a back door way of
14 assessing and shifting the fee and the risk. That
15 is unreasonable on its face. Importers/exporters
16 rely on the rates that they pay to create a landed
17 cost calculation. That landed cost calculation
18 assesses what is or is not a reasonable sale. If
19 they cannot rely on the system they have no sale
20 and we might as well just walk away from the
21 global transactions and the global marketplaces
22 that are necessary to help the American economy

1 compete. OTIs and their customers need a reliable
2 access to markets.

3 The Hanjin bankruptcy created a
4 catastrophic inefficiency when thousands of
5 containers were randomly abandoned around the
6 world. To offset the cost of the inefficiency and
7 delay marine terminal operators refused to handle,
8 release, or receive Hanjin containers without
9 upfront special off tariff charges that were
10 simply nothing more than a creation of one
11 person's imagination in an effort to offset a cost
12 of what they saw coming but did nothing about.
13 Charges to offset those losses and expenses were
14 shifted to OTIs and their customers, often time
15 saddling only the OTI who was caught in the middle
16 and through no fault of their own. As I am on
17 this OTI panel it is important to point out that
18 the OTI cannot prevent or resolve port congestion.
19 OTIs do not determine the size of the vessel or
20 its scheduling. OTIs do not control the decisions
21 made by the custodial carrier in the course of
22 loading or off loading the vessel. OTIs do not

1 control custodial carrier's choice of a terminal
2 operator. OTIs are not parties to labor
3 negotiations. Accordingly, it is unjust and
4 unreasonable practice to demand payment of charges
5 by an OTI in this position during periods of port
6 congestion.

7 I have been involved in international
8 trade for 29 years and negotiated hundreds of
9 detention, demurrage, and per diem cases in the
10 Ports of Los Angeles, Long Beach, the United
11 States, and across the world. My testimony is
12 based on my experience as a licensed customs
13 broker, a former OTI executive, an attorney
14 representing hundreds of OTIs and motor carriers,
15 past President of two local Southern California
16 Associations, and as an adjunct professor at the
17 California State University Long Beach in its
18 global logistics specialist program.

19 The FMC should adopt a Petition's policy
20 statement. Frustration and port congestion and
21 the charges associated with unjust and
22 unreasonable business practices are the reason I

1 am here today. Those are real world impacts that
2 have a potential to choke the international
3 commerce that we seek to promote. It will stunt
4 economic growth if it is allowed to happen again.
5 I respectfully submit that the Commission is in
6 the best position to understand the real world
7 situations when it hears from people such as the
8 members on this panel and the witnesses from the
9 industry have come before because it is essential
10 to this Commission's understanding, the
11 perspective of those who are being injured. It
12 will be useful to the Commission to consider the
13 Petition's proposed policy.

14 And I thank you again for the
15 opportunity and I thank staff for providing this
16 forum here today. Thank you very much.

17 MR. QUINN: If I may, Chairman Khouri,
18 Commissioners, and FMC staff, thank you. Let me
19 repeat, thank you for the opportunity to comment
20 on the Coalition for Fair Port Practices'
21 Petition. My name is Joseph Quinn; I'm President
22 of Sefco Export Management Company and hold an FMC

1 OTI ocean freight forwarders license since 2007.
2 I've been engaged in the business of U.S. exports
3 for several decades, starting in my family owned
4 export company in the late '70s. Today I perform
5 OTI ocean freight forwarding services, acting on
6 behalf of often small businesses and individual
7 shippers in all parts of the U.S. and the world.

8 I'm here today to speak up in strong
9 support for the Coalition's Petition. I support
10 their call for the FMC to issue a policy statement
11 to give support and guidance that will set
12 boundaries for what is deemed reasonable conduct.
13 There is a need for clarity regarding what could
14 be considered unreasonable assessments,
15 particularly in circumstances beyond the control
16 of shippers and forwarders.

17 Regarding my own experiences over the
18 past 30+ years, once incident in particular is
19 etched on my mind. For almost four years, from
20 August 2010 up through to 2014 I had to contend
21 with an informal docket 1914(I) before the FMC.
22 It proved to be terribly onerous and its outcome

1 to me seemed very unfair and unjust. The
2 particulars can be read online at proexport.US.
3 At the heart of the issue was port demurrage. In
4 brief, the issue I had to contend with began with
5 a trucker's overtime bill on a door move arranged
6 by the NVO we booked the shipment with. Although
7 valid it was strongly contested by the shipper who
8 self loaded the container. Per our offer and
9 terms all charges were to be prepaid prior to
10 export. We had to wait for payment, which
11 eventually came in, however late. Once that fee
12 was received from the shipper I immediately paid
13 the exact amount to the NVO. The freight, which
14 had already arrived in Miami, was released for
15 export. The NVO informed me that original ZIM
16 vessel it was booked for was missed. Thereafter
17 the NVO informed me that solely due to the
18 steamship line's scheduling issues subsequent
19 sailings were cancelled. It took approximately
20 three weeks more before the cargo was eventually
21 loaded on the next available ZIM vessel. When the
22 ocean container was finally loaded on the ship I

1 was informed that over \$4100 in demurrage had
2 accrued in the load Port of Miami. A big shock.
3 Neither the shipper nor the forwarder had any
4 control over ZIM's cancelled sailings, nor the
5 dwell time at the port once the freight was
6 released. At the time of its occurrence I sought
7 guidance, including from the FMC, which would have
8 been very helpful in addressing the issue. But I
9 was placed in a defensive mode having to answer an
10 informal docket. I answered personally, thinking
11 and hoping that the matter could be handled
12 quickly. The alternative of hiring a specialist
13 attorney, particularly for the several years' time
14 it actually took, would have meant tens of
15 thousands of dollars in legal fees alone. As
16 someone who has dedicated a majority of my life
17 and career to facilitating export shipments I
18 would have hoped to have had someone at the FMC,
19 an OTI ombudsman, to offer positive help and
20 guidance if and when such problems might occur.
21 Fruitful collaboration would have been so much
22 better. In some places and circumstances

1 container demurrage is a near certainty given the
2 short amount of free time versus the time
3 necessary to clear and deliver. It's one of the
4 biggest perils in this industry. Small shippers
5 and forwarders simply do not have the leverage
6 that large commercial shippers may have with the
7 carriers and MTOs to mitigate or dismiss
8 demurrage, particularly when the clock is ticking.
9 In the U.S. it seems as certain port operators
10 have over time been decreasing the amount of free
11 time at the ports, to such an extent that avoiding
12 demurrage is like threading a needle. The general
13 public has little knowledge of such things. This
14 is why holding a public hearing today in itself is
15 so important. Even the formation and existence of
16 the Coalition can itself have a beneficial impact
17 on providing checks and balances.

18 Of course, the prompt moving of cargo is
19 critically important to the operation of MTOs.
20 Demurrage and detention certainly serve a purpose.
21 But by and large MTOs seem to have practically
22 free reign on such matters. Demurrage and ever

1 decreasing free times may increase their bottom
2 line profits, but have become a hidden tax, a kind
3 of unjustified punishment, particularly on small
4 businesses and a bane on individual shippers. In
5 some ways it seems like extortion. Each port and
6 terminal is different. Some steamship lines, like
7 the RoRo carrier Hoegh have been fortunate to be
8 in a position to buy the real estate in several
9 ports where their ships berth. They have become
10 MTOs in their own right. That gives them much
11 greater leeway in how they can accommodate their
12 customers. Other MTOs, such as in New York, New
13 Jersey, and Miami, may not have the same incentive
14 as Hoegh's operations. So in regulatory terms,
15 there is no one size fits all solution. This is
16 not a perfectly free market. Shippers often have
17 no choice in what terminals to use. In some ports
18 MTOs, when left unchecked, have no incentive to
19 negotiate or wave D&D charges incurred, even when
20 resulting from conditions beyond anyone's control.

21 It's quite clear in reading the verified
22 statements and letters included in the Petition

1 that even large shippers often lack the leverage
2 to negotiate better outcomes. Small shippers in
3 far worse shape, having little to no recourse.
4 It's practically impossible to mitigate or dismiss
5 demurrage, particularly when the clock is ticking.
6 Circumstances beyond anyone's controls, such as
7 bad weather and congestion, can vary greatly. So
8 there is no one regulation that will ever be able
9 to match each situation. However, a policy
10 statement by the FMC can help provide clear
11 guidance and boundaries in regard to what is
12 deemed fair versus unreasonable behavior. The FMC
13 can help provide better understanding for both the
14 problem and to find solutions for all parties
15 involved, without having to result to often
16 frustrating and lengthy processes and costly
17 litigation.

18 What has happened in the past, for good
19 or bad, is not going to change, but we can and
20 must do better. I am in full agreement with the
21 proposed Statement of Policy and Petition Exhibit
22 A. It's certainly a step in the right direction.

1 Thank you.

2 MR. VICKERS: Good afternoon, Acting
3 Chairman Khouri, Commissioners Dye and Maffei. My
4 name is Brian Vickers; I'm here on behalf of the
5 International Association of Movers, IAM. IAM is
6 the household goods moving and forwarding
7 industry's largest global trade association. With
8 more than 2000 members its companies provide
9 moving, forwarding, shipping, logistics, and
10 related services in more than 170 countries for
11 household goods shipments.

12 IAM fully supports the policy statement
13 put forth by the Coalition, which would help bring
14 about more reasonable demurrage and detention
15 practices for household goods and other cargo
16 moving through our nation's seaports. In addition
17 to delays associated with weather, labor
18 contracts, negotiations, and the arrival of very
19 large ships, IAM member companies frequently
20 experience additional costs and delays resulting
21 from customs inspections and examination due to
22 the nature of the cargo. Household goods are

1 obviously packed differently and they will vary
2 unlike many commercial shipments headed through
3 the ports.

4 Page 39 of the Petition reviews this
5 detail, in part, delays arising from governmental
6 inspections of cargo before free time expires or
7 beyond a shipper's ability to control. The
8 shipper consigning has no control over the
9 decision of the government to inspect a particular
10 shipment or to the timing as to when an inspection
11 may occur. This is particularly true in the case
12 of household goods inspections, regardless of
13 whether all the paperwork is there and whether
14 it's packed properly or not.

15 Household good shipments are unique from
16 the majority of commercial and retail shipments as
17 the contents are not for commercial resale and are
18 often shipped at personal expense by a U.S.
19 citizen without any foreknowledge that the
20 clearance process through a U.S. port could result
21 in thousands of dollars in extra fees for the
22 government to clear the shipment. This guilty

1 until proven innocent process unfairly burdens the
2 shipper and the family in many cases that are
3 moving household goods. These exam fees are
4 unknown and therefore unable to be included in the
5 quote to move the household goods. There's an
6 expectation that there's a potential there but
7 there's no standard essentially for how much it
8 might cost, both in terms of moving it to an
9 intensive exam to be examined at the warehouse or
10 the time and delay that could be created as a
11 result of getting it there.

12 Packing of household goods are done by
13 professional movers. When they go through an
14 intensive exam things are, I'll say yanked out.
15 They're put back in but there's no requirement
16 that folks are trained at the warehouses to put
17 them back in the proper manner. They can be
18 susceptible to further damage during the
19 inspection process. The frequency of the exams
20 cannot be understated. While we don't have a 100
21 percent mandated as the earlier panelists did with
22 the meat council, we've had members come to us

1 within the past six months saying seventy-five
2 percent of their household goods shipments leaving
3 the country to the Port of Long Beach were taken
4 apart as part of the intensive examination. Costs
5 for exams can be \$600, they can be \$3000 or \$4000.
6 There's really no way to know just how long will
7 it take, will there be folks at the warehouse in
8 order to do it in a timely and efficient manner.

9 That being said, IM is asking the
10 Commission to consider in any forthcoming policy
11 statement either looking at future recommendations
12 to the terminals and the owners of the intensive
13 warehouse a flat fee, a max fee, some level of
14 expectation. We're not requesting that all
15 detention and demurrage charges be removed, as no
16 one here has, just that we have an expectation of
17 what we might expect, particularly for our
18 industry. We're just more susceptible to having
19 these exams done and it's often not done, you
20 know, on site. It's got to be picked up, it's got
21 to be moved, and it's got to be sent over to the
22 warehouse, resulting in more charges. So any

1 policy statement that would look at, you know, a
2 recommendation of how and when things are done in
3 the exam world would be great.

4 You all have put so much time and effort
5 as an Agency looking at port congestion issues and
6 meeting with all the stakeholders, and we really
7 appreciate that and we look forward to working
8 with you in the future.

9 Thank you.

10 CHAIRMAN KHOURI: Thanks to all; very
11 good presentations. I'm going to start with one
12 that's sort of maybe on the small side, but it
13 caught my attention. Jeannette, you were talking
14 about chassis charges, if you recall. And when
15 you -- caught at a terminal -- this was again
16 within the context of government inspections, et
17 cetera, now the chassis holding the container
18 that's getting inspected, the chassis people get
19 paid don't they?

20 MS. GIOIA: My reference was more
21 directed to the steamship line and the detention
22 charges for use of the steamship line equipment.

1 Chassis charges do also come into play and
2 obviously it will depend on who is the owner of
3 the chassis, if that's a trucker or if it's the
4 steamship line, if it's a rented chassis of the
5 trucker.

6 MR. RILEY: So if I may add to that,
7 because what happened was in the port of New York
8 New Jersey that we're a little bit different with
9 our exams than they are in the other ports in the
10 nation. We actually have our exams done off site,
11 they're not done at the terminal. So in the past
12 when they were done at the terminal, believe me,
13 we had problems when they were done at the
14 terminal. They wouldn't get done on time,
15 everybody was pointing fingers. There was no
16 transparency in the system. Now, they're being
17 drained off to exam sites. But what happened was
18 prior you did not have to pay for detention
19 charges as long as it was on the pier. Now what
20 happens when they get moved off to the exam site,
21 as soon as that container is moved off the pier
22 the clock starts ticking for the detention on the

1 free time on the container. And normally it
2 doesn't get out of the exam station within one or
3 two days. So it's there for two days, three days,
4 the clock is ticking. So by the time it comes out
5 of that now your time is starting on detention
6 with the line. So it takes another day or two to
7 go to the BCO, you've got to load it and get back.
8 So then they get a bill. A couple of months later
9 they get a bill from the line saying you owe
10 detention charges where previously they would not
11 incur those charges.

12 CHAIRMAN KHOURI: Okay. But I guess a
13 rather loose line I'm sort of pointing to there is
14 a principle where the chassis provider --
15 everybody is nodding their head -- well of course
16 they get paid per day, but the owner of the
17 container doesn't get paid. Under --

18 MS. GIOIA: Under current situation now
19 at the Port of New York and New Jersey the owner
20 of the container is getting paid.

21 CHAIRMAN KHOURI: But your proposal is
22 that they not be paid?

1 MS. GIOIA: We really question why the
2 change even. At one time it was part of the port
3 process, now it's no longer part of the port
4 process and the container held at the examination
5 site, it's a wildcard. When an exam properly --
6 efficient circumstances, it will turn around
7 fairly easily. But in moment of port congestion
8 it's very difficult sometimes, even once the
9 container is released, getting it back to the
10 terminal. So it's a situation for us that's
11 totally out of the control of the importer. It
12 does relate back to the issues of security for the
13 nation. Clearly there's a need to examine
14 products. This really should be somehow treated
15 in a different way so these costs are defrayed
16 maybe by a larger community. That's not something
17 that started that the Commission is going to be
18 able to solve, but the point here is it's
19 definitely a charge that one importer or one BCO
20 should not have to defray. It is totally out of
21 their control. So when we look at the set of
22 circumstances that are beyond the control in which

1 punishing costs incur, that is one of them.

2 MR. RILEY: So what would be probably
3 reasonable is that the container, the charges
4 which start when the cargo is released at the exam
5 site. Because then the BCO should make every
6 opportunity to be able to pull that container from
7 the exam site as quickly as possible to be able to
8 not incur charges. They're not going to let their
9 products sit there for three or four days in any
10 event. So then this way they could avoid those
11 charges if it goes out of the exam site, they have
12 48 hours to return that container, they'll be able
13 to get that container back within 48 hours.

14 CHAIRMAN KHOURI: Mr. Roche your example
15 of three different times having to go back, how
16 did that end up getting resolved?

17 MR. ROCHE: On the third time they got
18 the container and they left, but they paid
19 demurrage charges each of the three times, a total
20 of \$1700. It has not been resolved since
21 November. So we even had waiver or extension of
22 free time during that period that was acknowledged

1 by the terminal after the fact and we still can't
2 collect it back. It's one of those -- and I use
3 that example specifically because it had a lot of
4 components to it, that you have to pay cash on the
5 barrelhead, there's no ability to go in and really
6 argue the fact after, and it was an escalating
7 type of a condition that just kept getting worse
8 and worse and worse.

9 I will say, you know -- and I did point
10 out here, there is that risk that we assume, that
11 there's, you know, waiting time and the trucker
12 does not compensated for that. There's dry runs
13 and the trucker does not get compensated for that.
14 And so if we don't get this thing resolved here
15 shortly I will be going to CADRS.

16 CHAIRMAN KHOURI: Because that's above
17 and beyond the \$1700 to be clear?

18 MR. ROCHE: Correct. Yes. The \$1700 is
19 the straight demurrage and detention time. Just
20 demurrage time, I'm sorry. Straight demurrage.

21 CHAIRMAN KHOURI: Appointment systems.
22 I know in the Port of New York and the group that

1 has been working up there for -- what, the last
2 three years I think -- and from what I understand
3 doing good work it seems, very careful as they
4 move forward. This is a polite way to say, but I
5 asked previous panels, the appointment systems,
6 how often are you saying that you make a call for
7 an appointment, or your designated dray company
8 does, and they're told that it's not on the fifth
9 day at the eleventh hour, it's at a -- because
10 there's all sorts of ways that things can get
11 gained. We all agree with that. But that you
12 make a reasonable request at a reasonable time and
13 you're told there just are no -- we're not talking
14 about snow, we're not talking about anything else
15 -- no windows until next week. How prevalent is
16 that?

17 MR. ROCHE: So from our standpoint out
18 in the West Coast we're seeing that on a regular
19 basis.

20 CHAIRMAN KHOURI: Okay, but what does
21 regular basis mean, Mr. Roche?

22 MR. ROCHE: I wouldn't be able to put a

1 number on it, but at least monthly that we're
2 seeing that there is that kind of a condition. I
3 would also say that I have another live example
4 right now in Dallas where there's just no chassis.
5 So the container comes in, the carrier has the
6 responsibility to deliver that container to us,
7 they have to use the fleet chassis that are the
8 pool chassis out of Dallas, and we're told all of
9 last week until Friday that there was no chassis
10 available in Dallas. So you're basically in
11 demurrage for eight days. Very similar to the
12 appointment system. It's just there's no
13 available for you to go and get that container.

14 Finally on Friday --

15 CHAIRMAN KHOURI: So you're saying those
16 are door moves and there's no chassis --

17 MR. ROCHE: No, it's merchant haulage,
18 but you have to use the pool chassis provided at
19 the --

20 CHAIRMAN KHOURI: Oh, okay.

21 MR. ROCHE: You cannot bring your own
22 chassis.

1 CHAIRMAN KHOURI: I see your point.

2 Okay.

3 MR. ROCHE: Yes. Because they are a
4 wield operation but they've got everything in the
5 stack now because there's no chassis. Frankly the
6 chassis went from Dallas to Houston and a lot of
7 them haven't been returned yet so there's just a
8 big shortage of chassis in Dallas.

9 It's a similar kind of situation with
10 the appointments, that basically the last free day
11 was Friday the week before and we didn't finally
12 get a chassis until Friday the week of and not
13 agreement to waive demurrage until that final day.
14 It took a week's worth of arguing with the
15 steamship line to get them to waive the demurrage
16 so that we can go in and pick it up, which we did
17 within two hours, and deliver that container. But
18 if we hadn't we were then going to lose free time
19 on the following day and go back into demurrage
20 again. So we quickly picked it up.

21 CHAIRMAN KHOURI: Okay.

22 MS. GIOIA: If we could add further --

1 CHAIRMAN KHOURI: Certainly.

2 MS. GIOIA: -- this kind of an exercise
3 throws additional inefficiencies into the system
4 and there's a tremendous hidden cost to all the
5 parties.

6 CHAIRMAN KHOURI: Understood.
7 Commissioner?

8 COMMISSIONER DYE: Thank you. Rich, do
9 you know who operates that chassis pool?

10 MR. ROCHE: The chassis pool in Dallas,
11 I believe that is TRAC, is the operator. Hapag-
12 Lloyd was the steamship line. And it's the Dallas
13 rail ramp.

14 COMMISSIONER DYE: Okay. Thank you. In
15 your experience, assume that the Commission is to
16 accept the Petition guidance, what would you
17 expect the consequences to be on behalf of the
18 terminals and the steamship lines? Do you have
19 any?

20 MR. ROCHE: Yeah, and I don't think that
21 they would be bad consequences. The consequences
22 that I would expect is that there would be a

1 greater increase in free time so that the
2 terminals or the steamship lines are not actually
3 collecting when there's issues that are beyond
4 everyone's control, not collecting the demurrage
5 and detention. So I don't think that when we talk
6 about consequences it's an extension of free time.
7 To them it's a consequence of not collecting the
8 money that they're collecting today, but should
9 they be is the question that's on the table.

10 COMMISSIONER DYE: Right, okay.

11 MS. GIOIA: We would actually, if we may
12 add, point to the situation with the cyber attack
13 on the Maersk system. It was absolutely crazy in
14 the Port of New York and free time was sort of
15 extended incrementally. There was an indication
16 on the part of terminals that definitely storage
17 bills were issued, but that at the end of the day
18 the free time was extended to accommodate the
19 period. And we believe, we truly believe, that
20 that kind of flexibility, which was a very
21 positive thing, was a direct result of this kind
22 of a discussion.

1 COMMISSIONER DYE: So, Cameron, what is
2 issue most often litigated in these cases? In
3 your experience.

4 MR. ROBERTS: In my experience the
5 actual litigation goes to those containers that
6 tend to be abandoned for a period of time because
7 collection of the demurrage has actually worked to
8 defeat the intended object, which is to expedite
9 the delivery of the goods. It has had the counter
10 effect of creating merchant disputes between the
11 parties. Recently litigated approximately \$2
12 million demurrage case where there was in transit
13 demurrage assessed on an export shipment. There
14 was a request by the merchant to not send 150
15 ocean freight containers to the port it was
16 originally consigned to, but to a different port
17 because the merchants had made an election to do
18 this. They requested a quotation from the
19 custodial carrier of what would that diversion
20 cost be. They got a quotation, in reliance on
21 that quotation they then acted. When the
22 containers showed up the following week at the new

1 port of destination they were told that the
2 charges included \$75,000 in demurrage that was
3 assessed at the trans shipment port. The irony of
4 all of this was that amount was actually not
5 accurately calculated and it took the steamship
6 line over two months to admit to that. And in
7 that course, of course the demurrage at the new
8 destination port only increased.

9 Commodities that are exported by the
10 United States tend to be raw commodities. In this
11 case it was untreated logs from the south. It
12 went out of Savannah, Georgia largely. And you
13 can imagine what happens to raw timber sitting in
14 a metal box on a Chinese port in the middle of
15 September. Nothing good can come of this. But
16 none of the parties accurately on the carrier side
17 reported the amount of demurrage that should have
18 been assessed, that it was even being assessed,
19 and when asked what the basis for it, were given
20 misleading and incorrect answers. It was not
21 until forced in litigation that we were given a
22 direct answer to the question of what is the basis

1 of these charges.

2 And it's that kind of inefficiency and a
3 lack of accountability that I think is going to
4 drive large litigation. These cases of per diem
5 and smaller demurrage amounts frankly don't -- you
6 know, if you do the math on it, tend not to work
7 out. But I will say that smaller amounts,
8 especially in the aggregate, during port
9 congestion, especially on per diem, it is almost
10 impossible commercially to deal with that because
11 of the UIIA agreement that is in place with the
12 motor carriers. That agreement requires
13 arbitration, and I would note that that
14 arbitration clause has been deemed by a court in
15 California and in Texas to be both procedurally
16 and substantively unconscionable. So you have
17 commercial agreements that are being litigated.
18 The method of resolution has been deemed to be
19 unconscionable by at least two courts, and this
20 causes me to wonder is there a viable commercial
21 solution, at least in the question of per diem, on
22 specific cases, especially when you have to submit

1 it, and can only submit them approximately -- I
2 believe the number is five at a time and you're
3 really subject to the contractual overreach
4 because you have basically the carriers driving
5 the terms and conditions of the UIIA. And while
6 there is opportunities for some negotiation, I
7 would argue that the footing is unequal and I
8 think the courts have validated that position.

9 COMMISSIONER DYE: Thank you. Thank
10 you. And one more briefly. How does the
11 California law operate that removes the demurrage
12 and detention charges against truckers in certain
13 cases?

14 MR. ROBERTS: Yeah. There's a
15 California law, California Business and
16 Professions Code, that was written to address
17 intermodal motor carriers --

18 COMMISSIONER DYE: Right.

19 MR. ROBERTS: -- being assessed
20 demurrage during times of gate closure or
21 inaccessibility --

22 COMMISSIONER DYE: Yes.

1 MR. ROBERTS: -- due to forces generally
2 beyond everyone's control and also labor and in
3 other circumstances. But the bellwether of that
4 legislation or that law is closure. And what we
5 have here is -- if you ask the terminal they'll
6 say well, we're open for business.

7 COMMISSIONER DYE: Okay.

8 MR. ROBERTS: The open for business sign
9 is there. And you become in a huge argument about
10 whether they were truly open or was the gate
11 closed and what does that mean.

12 COMMISSIONER DYE: I see. So it's not
13 as good as it sounds for the trucker.

14 MR. ROBERTS: That bright line -- you
15 know, we've been talking a lot about trying to
16 make a one size fit all situation. That's why we
17 have case by case examination of issues.
18 Regulations never historically have addressed all
19 facts and all cases, they are broad. And then we
20 look at the facts when we make a determination
21 based on the fact and circumstances of what is or
22 is not inequitable and if the gate is closed or

1 not closed.

2 COMMISSIONER DYE: Thank you. Thank
3 you.

4 CHAIRMAN KHOURI: And I think that's a
5 point that Commissioner Maffei in several of his
6 questions has been trying to drill to.

7 COMMISSIONER MAFFEI: Thank you. Thank
8 you, Mr. Chairman. Just at point of
9 clarification, Mr. Roche, where are you? Where is
10 Mohawk Global Logistics headquartered?

11 MR. ROCHE: In Syracuse, New York.

12 COMMISSIONER MAFFEI: Oh, the best
13 medium-sized city in the United States.

14 (Laughter)

15 MR. ROCHE: That's right.

16 COMMISSIONER MAFFEI: But perhaps tied
17 with Louisville, perhaps tied with Louisville,
18 Kentucky.

19 SPEAKER: He's shameless.

20 COMMISSIONER MAFFEI: It's off topic a
21 little bit, Mr. Roche, but do you consider the
22 Washington, D.C. weather to be cold or winter like

1 at all? (Laughter)

2 MR. ROCHE: It's very comfortable right
3 now, including a little snow we might have later
4 today.

5 COMMISSIONER MAFFEI: In concur, I
6 concur. I do want to ask you, though, some
7 serious questions about what you've been saying
8 about risk. Because you've been talking about
9 sort of there's a level of risk and I've been
10 trying to unwind kind of what is it's reasonable
11 for the shipper or intermediary to assume. In
12 fact, you know, part of the advantage of hiring an
13 intermediary is that the shipping, particularly
14 internationally, is somewhat unpredictable and
15 risky. And so, you know, it's not something maybe
16 to just go into, you want to hire an expert in.
17 And so it's in fact part of the reason why people
18 hire all of you. So how do we figure out how much
19 risk is reasonable for you to assume of these
20 unpredictable things and where there's a level of
21 risk that if it's passed onto you by carriers or
22 MTOs is unreasonable?

1 MR. ROCHE: Yeah, so I would have to say
2 that when we took that risk, and it was brought up
3 earlier today by Mr. Khouri, that the carriers
4 and the MTOs assume an awful lot of risk. The
5 carriers especially if they have to park their
6 vessels. The cost for that is enormous. MTOs, if
7 they can't flow their terminals, the cost to them
8 also enormous. The extra thing that they have to
9 do -- and we heard about shoveling the snow and
10 that sort of thing. I think that when I bring
11 this point to the table what I'm really trying to
12 establish that we're not asking an unfair burden
13 on them that we -- because we do have risk as
14 well. We're asking them that they cover their
15 side and we cover ours. You know, when you look
16 at some of the charge backs that our customers
17 face when they can't deliver contractually their
18 container on time, that's an enormous risk that
19 that BCO takes. When you look at the truckers
20 that are -- they get paid by the run, so when they
21 deliver that container they get paid for that.
22 But they don't always get paid or sometimes never

1 get paid for dry runs or for waiting time, the
2 time that they spent in line. It's just accepted
3 that that's part of the risk. Well, eight hours
4 is unreasonable. So where do you draw the line
5 and say that okay, you know, we heard 30 minute
6 turn times, we're never going to see that again,
7 but a 1 hour or a 2 hour turn time in a terminal
8 is proper. And a four hour wait in line or an
9 eight hour wait in line, or in some cases even
10 ten, which we've experienced in the Port of New
11 York in recent years, that that's just not proper
12 at all. We can't compensate those drivers. And
13 then to add insult to injury we end up with
14 demurrage charges because we couldn't pick up
15 those containers.

16 The example that I drew before about
17 doing a 25 container a day flow for the course of
18 that week, and I can't pick up those containers
19 because of some weather event or for whatever
20 reason, the meltdown of a system, or whatever it
21 is, I end up with then 10 or 15 or 20 or 40
22 containers in demurrage. Is that risk mine?

1 So I don't know if I've answered your
2 question, but I think I have to say that there is
3 risk on both side and we don't charge them for the
4 dry runs and we don't charge them for the waiting
5 time that we have.

6 COMMISSIONER MAFFEI: Yeah.

7 MR. ROCHE: You know, we fight the
8 demurrage and detention with the geofence stats
9 that we can keep on this, but we don't have a way
10 of going back and charging them because they
11 didn't perform. We're actually performing, but we
12 don't need to be penalized for lack for their
13 performance.

14 COMMISSIONER MAFFEI: I think you
15 addressed the question somewhat, and feel to jump
16 back in here, but let me ask Mr. Vickers, because
17 you have sort of a more precise business and that
18 sort of thing. It seems to me that transporting
19 household goods is an inherently very high risk
20 from a financial perspective. So just trying to
21 examine it, I mean isn't that part of your
22 business? I mean isn't it included in your

1 business model, this level of risk that, you know,
2 there might be an inspection and if there's an
3 inspection that could cause other -- and to the
4 extent it is, I mean can you pass some of the cost
5 of that risk onto your customers? And is there a
6 market failure somewhere along the line that I'm
7 not accounting for?

8 MR. VICKERS: Well, some of the cost is
9 obviously passed on. It's difficult because
10 there's very little leverage. Okay. So these are
11 all one off shipments. You know, you're not going
12 to keep moving in and out of the country and so
13 the leverage is the kind of first disadvantage on
14 what's there. The second part is understanding
15 the cost. Is there a greater chance that it's
16 going to be examined -- yeah, probably, versus a
17 CTPAT or commercial shipment coming through the
18 ports, or even leaving the ports in the case of
19 Long Beach as we've seen recently on the intensive
20 exams going out. So there's the risk there,
21 absolutely. What's not understood is how much is
22 it going to cost. We have anecdotal information

1 from our members that would reach as high as \$4-
2 5000 for the exam. That's not including any of
3 the free time lost in getting the household goods
4 to the offsite exam or waiting, if we have to
5 wait, to have their staff go through and examine
6 it and put everything back in and put it there,
7 not to mention the equipment rentals that come
8 with that as well. It's all part of the process.

9 So, yes, to answer your question, there
10 is a greater likelihood of it, however,
11 understanding what those costs would be is still
12 unknown. And, you know, as a company packing up
13 properly, having all the documentation, and then
14 just getting pulled for a random government
15 inspection, it's not necessarily fair -- I guess
16 you could put it that way -- to have no
17 understanding of how much it's going to cost or
18 who's going to end up paying for it. Obviously
19 the cost goes back to the moving company, the
20 moving company puts it back with either the
21 family. Say, well, we've got these costs coming
22 in, or if it's a corporate role they might sit

1 down and be able to work out something with the
2 company.

3 COMMISSIONER MAFFEI: Right.

4 MR. VICKERS: But the parameters in
5 themselves --

6 COMMISSIONER MAFFEI: But aren't there
7 insurance products and things like that you can
8 buy? In other words -- okay, there aren't. So,
9 Mr. Quinn, feel free to come in her obviously, but
10 are there reasons why there are not, are there
11 reasons why your organizations don't offer
12 insurance products that would allow --

13 MR. ROBERTS: They don't exist.

14 COMMISSIONER MAFFEI: They don't exist?
15 Well, you can create them, right? I mean isn't
16 that what trade organizations do in other
17 industries? I mean --

18 MR. ROBERTS: It's hard to get
19 underwriters to accept delay.

20 COMMISSIONER MAFFEI: Yeah.

21 MR. ROBERTS: Fiscal loss and damage,
22 absolutely. No problem at all in the market.

1 COMMISSIONER MAFFEI: Okay. So there's
2 a -- right. Because that's helpful actually, that
3 there's a --

4 MR. ROBERTS: But delay -- the nature
5 that we're talking about is shifted risk that
6 underwriters will not accept.

7 COMMISSIONER MAFFEI: Yeah, because it's
8 so difficult to predict.

9 MR. ROBERTS: And where's the harm.

10 COMMISSIONER MAFFEI: And where's the
11 harm.

12 MR. ROBERTS: It becomes
13 inconsequential.

14 COMMISSIONER MAFFEI: And you don't know
15 what it is. Okay. So several of you -- I mean I
16 think Mr. Roche mentioned your lateral power,
17 somebody on the last panel mentioned oligopoly.
18 Look, you know, I mean maybe I'm anticipating some
19 of the arguments tomorrow, but many carriers say
20 that they have been struggling with years of
21 losses because of the low freight rates. If they
22 have so much market power how come they just don't

1 increase their freight rates? And, actually, Mr.
2 Roberts, you mentioned this is a back door way and
3 that you -- you know, if they would just include
4 it in the rate -- I mean why wouldn't they just
5 include it in the rate?

6 MR. ROBERTS: Well, I think that's an
7 excellent question for them.

8 COMMISSIONER MAFFEI: I'll ask it.

9 MR. ROBERTS: Because they're in the
10 best position to know their rate matrix and what
11 their cost structure is. I think from an NVOCC's
12 perspective we look to the carriers because the
13 carriers frankly dictate to us what the rates are
14 that we can get in a service contract or in an NSA
15 or on a spot market rate for an NSA. So all of
16 those tools are available to the NVOCC but we're
17 not freight rate makers, we're takers in the
18 marketplace and we seek to make a fair living off
19 of the \$100 differential that we can often make in
20 the transaction.

21 COMMISSIONER MAFFEI: Because the
22 practical matter, if suddenly the rates went way

1 up it's not like you could -- you wouldn't be able
2 to change it. It's the fact that they're I guess
3 relatively low, or relatively low compared to
4 historical standards is just -- it's good for you
5 but it's not something you can control or go to
6 somebody else or --

7 MR. ROBERTS: I think the margins that
8 the NVOCC is able to -- I'll use the euphemism --
9 enjoy are based not on what anything other than
10 what that value of the service is. It's not a
11 markup that is -- you can't say okay, the freight
12 rate increased. You know, my experience as an OTI
13 selling rates, when I was in the industry we
14 couldn't just mark everything up 30 percent. I
15 mean it didn't work like that, we had to publish
16 tariff, we had to compete in the marketplace. And
17 certainly now with the MSA we have that
18 shorter-term but we undertake also risks that the
19 market rate may change because of surcharges or
20 something else that we can't pass through.

21 COMMISSIONER MAFFEI: I guess one of the
22 things I'm trying to ascertain is as an

1 alternative to a substantive rule describing what
2 practices would be unreasonable, if there were
3 rules to increase transparency or set procedural
4 requirements related to how these -- whether those
5 practices, whether that would address some of the
6 issues in the Petition or not. In other words --
7 and it gets back a little bit to our discussion
8 about whether the carriers are using this as a
9 profit center or whether these are -- you know, if
10 there were more sort of transparency requirements
11 so that they had to tell you how much of these
12 charges they had to then pass -- you know, pay or
13 how much were profits, or whatever.

14 Go ahead.

15 MR. ROBERTS: I can address the profit
16 center issue.

17 COMMISSIONER MAFFEI: Yeah.

18 MR. ROBERTS: I mean under the UIIA if I
19 take the container and interchange it and I move
20 it by truck to an inland point and it's involved
21 in an accident and it's a constructive total loss,
22 under the carrier's terms of the addendum to that

1 agreement there would be an adjustment based on
2 the book value and depreciation of the asset. And
3 that's what I would owe. I would estimate that to
4 rough numbers be \$3000, maybe a little more, maybe
5 a little less depending on the line and the
6 condition of the container, whether it's a 20 or a
7 40.

8 COMMISSIONER MAFFEI: Right, right.

9 MR. ROBERTS: Demurrage at \$350 a day,
10 10 day period, you're exceeding the complete value
11 of the box. I might as well get in an accident
12 with it. I mean pragmatically that's an economic
13 decision that's not ridiculous. Just like during
14 the course of this we actually advised a client to
15 consider the possibility of letting cargo go
16 general order rather than make an entry and
17 letting it go into the normal stream. It would
18 have been more economically efficient to have
19 customs seize the box as abandoned merchandise,
20 move it to a general order warehouse and make an
21 entry. When that is a realistic opportunity to
22 consider --

1 COMMISSIONER MAFFEI: Yeah.

2 MR. ROBERTS: -- your market is broken.
3 That's crazy to do what I just said because of the
4 cost, but yet those costs would be lower than the
5 cost of \$350 a day.

6 COMMISSIONER MAFFEI: Even if you have
7 to change some of the names, I'd love it if you
8 could provide that example. That's very
9 interesting to me.

10 MR. ROBERTS: I can't.

11 COMMISSIONER MAFFEI: Okay. And, you
12 know, for the record I guess. Yeah, I mean I
13 think trying to work out how we would get our
14 hands around where -- even this definition of
15 reasonable I think is a challenge.

16 Anyway, I'll finish my questioning. So
17 thank you, Mr. Chairman.

18 MR. QUINN: If I can contribute. I
19 think that transparency should be one of your
20 essential focuses because I realize how difficult
21 your job is, because you have a lot of people
22 yelling and they want some help. And then you've

1 got to figure out what the hell to do. So --

2 COMMISSIONER MAFFEI: Amazingly, no one
3 makes money in this entire industry. I don't know
4 how everybody stays employed.

5 MR. QUINN: I understand. You guys
6 deserve a raise, I'll say that.

7 COMMISSIONER MAFFEI: Well, I don't mean
8 us.

9 MR. QUINN: But the transparency part,
10 and I have a lot of sympathy for the gentleman
11 from the IAM because they have a terrible time
12 because in reality the household goods shippers
13 are all one shot deals and most of the shippers
14 have no idea, no clue what to expect.

15 One thing I'm hoping that in whatever
16 policy pronouncement that you have -- see I do a
17 lot of export. In reality export demurrage for me
18 is extremely rare. I see it more overseas, which
19 is not in your jurisdiction, but I'm hoping that
20 there might be a ripple effect for what you do.
21 Perhaps you can analyze and provide statistics as
22 to how much demurrage is costing and at what ports

1 they're costing. That kind of data that you could
2 perhaps broadcast out would be good.

3 But, for example, I had a client who had
4 a shipment to France and has no -- you have no
5 jurisdiction in that -- but about a month after
6 his shipment landed and was cleared and delivered
7 he gets a bill for \$1200. He didn't even know
8 about it. And sometimes I've seen in this
9 industry where people would get bills after the
10 cargo has been delivered and it hasn't been held
11 up, but something comes out of the blue saying oh,
12 there's something more, you know. So transparency
13 is the main thing.

14 COMMISSIONER MAFFEI: If that case does
15 involve entities we regulate, CADRS might be able
16 to help obviously.

17 MR. QUINN: Right.

18 COMMISSIONER MAFFEI: I mean you know
19 this, but I'll say it for the record. You know,
20 that's part of the reason why we have it, for
21 those kind of one offs.

22 MR. QUINN: Yeah, well the household

1 goods industries, they're all one offs. And
2 mostly it's going to be borne by the cargo owner.
3 If they're lucky maybe they will. But 95 percent
4 of the people will have to pay it themselves.

5 COMMISSIONER MAFFEI: Okay, I have one
6 further question, but I'll yield unless there's
7 time.

8 CHAIRMAN KHOURI: Go ahead and finish.

9 COMMISSIONER MAFFEI: Well, just I mean
10 this whole issue of the contracts and whether you
11 have any control over them. I mean it seems to me
12 that -- well, has anyone ever tried to -- or any
13 of your members, just tried to renegotiate some of
14 these contracts? Or in fact are the contracts
15 just not accessible? Are you not parties to the
16 contracts that we're talking about? In other
17 words, we talked a little bit today about contract
18 law and the -- sounds to me these contracts
19 basically are of course designed to protect the
20 MTOs and that sort of thing, but contracts can be
21 renegotiated. You can say well I'm not going to
22 follow that contract, we need another contract.

1 Has there been any attempt to go back and
2 renegotiate these contracts after one of these
3 ostensibly unreasonable issues? Or simply no
4 opportunity to?

5 MR. ROCHE: I'll take that. We do
6 negotiate some contracts and members of our
7 association negotiate contracts. I think you
8 heard before, there tends to be a boilerplate
9 reference also to the tariffs in the contracts.
10 These are things that are very, very difficult to
11 change, in trying to change the boilerplate,
12 especially at the size level that I'm representing
13 here today, the medium to smaller size shipper and
14 NVOCC. So, you know, and then when you ask in the
15 context of demurrage and detention, that's not
16 even a discussion in the contract. That's a
17 contract between the MTO and the carrier. So we
18 don't have a seat at that table, we don't get to
19 negotiate that. Free time, extended free time for
20 detention at a warehouse, we can negotiate that
21 into a contract, but on the port demurrage, not a
22 chance.

1 COMMISSIONER MAFFEI: Thank you. Thank
2 you again.

3 CHAIRMAN KHOURI: Well, a comment, then
4 a question. I understand your point, Mr. Roberts,
5 about book value of a container, but let's
6 recognize, especially as I understand the newest
7 tax law that you can write off certain
8 investments. The book value on a container, I
9 assume -- I'm not an accountant but I've been in
10 business -- would go to zero because it's written
11 down to zero in one year. Book value is not the
12 market value or the value that piece of equipment
13 could earn if it continued to work in the trades
14 for the next three-four years. But, I understand.

15 Let me go back to Mr. Quinn because you
16 were right on the edge of something that has been
17 interesting and is certainly going to be some
18 questions for tomorrow. So if the fellows are
19 still here they can make note. So a part of the
20 purpose of Shipping Act as congress gave it to us
21 is to whatever extent possible harmonize with our
22 trading partners in other countries. What happens

1 overseas? I mean if -- will there be this kind of
2 meeting then -- Shanghai, Rotterdam, et cetera?

3 MR. QUINN: It's very interesting.
4 Because I'm in this business I've always loved
5 international. You know, this is why I'm in it, I
6 like it. And I investigate a lot myself and I
7 look at different ports in different parts of the
8 world and I was remarking recently in northern
9 Brazil there's a port and they were advertising
10 their services and they said one month free at
11 their port. I said, my god, that's terrific. And
12 then I compared that with some ports in India and
13 they were giving 20 days free. But of course in
14 India it takes so damn long to go through customs
15 they have to do that.

16 So it would be perhaps instructive for
17 the Commission to look at some of the practices
18 elsewhere. I don't think that some of these other
19 entities, other countries in Europe and so on are
20 really doing what you're doing here, but I'm
21 hoping that there can be a ripple effect where the
22 FMC can in fact take a leadership role. Not

1 necessarily put down like, you know, harsh rules
2 and regulations, but guidance. Because I've seen
3 surged demurrage in Europe, and perhaps if they
4 say well, you know, this is what the FMC just did
5 in the United States, well, we might try to do the
6 same thing, to harmonize.

7 So I'm hoping for the ripple effect. I
8 can't really give you all the answers. I'd be
9 happy to look into it and have an ongoing dialogue
10 about this. But I don't think anyone else that
11 I've seen is having this kind of meeting and I
12 think that the issue of demurrage is incredibly
13 important. Most people in the public have no
14 idea. It took me years to figure out how to spell
15 it, one M, two -- you know. So the people in the
16 general public, especially household goods people.
17 People in the trade know it. It's like asking a
18 priest, you know, what do you think of the devil.
19 You know, it's terrible.

20 But with household goods, that's where
21 you get into the fairness things because people
22 just don't know. And they have no bargaining

1 power whatsoever. They're simply stuck. And
2 unfortunately sometimes the OTI and the packers
3 and the movers, they're the ones who get the
4 blame, but it's really part of what happens. And,
5 for example, I had an agent recently in
6 Switzerland give me a rate and they said from
7 Rotterdam to Geneva it's going to take 18 days to
8 have it cleared and delivered. However, most of
9 the carriers were only giving maximum 10 days. So
10 on their quote they have to say that demurrage is
11 a certainty and they can't tell you how much it
12 will be. So a lot of movers will simply give a
13 sort of like this is what our rate includes and
14 this is what the rate does not include. And it
15 never includes demurrage, no one knows how much
16 that's going to be.

17 So it's a big -- you know, people fear
18 the unknown and that is a big problem. So the
19 amount -- you're never going to cure any of these
20 problems, but to shed light upon it and to give
21 broad direction would be very helpful.

22 CHAIRMAN KHOURI: For example, Long

1 Beach has been cited I think a half dozen times in
2 terms of government inspection and their policy,
3 which I assume you all like.

4 MR. RILEY: Yes. (Laughter)

5 CHAIRMAN KHOURI: But your point is spot
6 on of do they give unlimited free time as long as
7 the government may take, do they just recognize it
8 may take three extra days and then at some point
9 free time begins to run.

10 And I'm sure there's all sorts of
11 variations there, but your point is the allocation of
12 risk and when does it shift from one side to another.

13 MR. QUINN: It's pretty strict. I don't
14 think that -- they really don't care, for whatever
15 reason. They're just going to say this is how
16 many days. And it doesn't matter if it's because
17 it's got to be inspected or what have you.

18 CHAIRMAN KHOURI: My last comment is
19 this, that -- I think if we have just one
20 microphone it would help.

21 That Mr. Roche, you know, it was one of
22 the first notes I made about transparency, and

1 then, Mr. Quinn, you picked up on it again in you
2 all's discussion. And I just have an open
3 question that I may want to explore with my
4 colleagues about is there a transparency process
5 that we may want to engage in to help bring --
6 there's a lot of very good -- today's been very
7 instructive, very helpful, but is there a process
8 that we might capture this on a rather strict
9 basis.

10 Mr. Roche, you know, when I said so how
11 often does this -- on the appointment question,
12 and I fully appreciate you can't put a number on
13 it.

14 MR. ROCHE: Give me a little time. I
15 can come back with some stats.

16 CHAIRMAN KHOURI: Okay. My colleagues,
17 anything else? It's been a good day?

18 Let me do a little housekeeping.
19 Because of the weather -- Ashley, I saw you come
20 in a little late. Is it already starting to snow?

21 MR. CRAIG: No, Mr. Chairman, it's nice
22 and quiet crisp outside.

1 CHAIRMAN KHOURI: No, I didn't mean to
2 pick on -- but I just -- when I saw you come in I
3 wondered -- they're predicting snow tonight.
4 People with more tenure here in D.C. Than I -- I
5 only have eight years -- our guess was if it's
6 only one to two inches it may be a two hour delay
7 from the government OPM. If that be true then
8 what I commit is -- staff, you're going to grit
9 your teeth -- please try to get in as early as
10 possible, understand it would be a 10:00 a.m.
11 Start time.

12 And I will try to be here at 10:00 and we
13 will start at 10 o'clock or as soon as we have the
14 first panel in the morning and enough FMC staff to
15 work all the electronics, et cetera, et cetera. If
16 it's a full shutdown we're I assume just going to have
17 to figure out what we do from there.

18 MS. DICKON: If it's more of a delay
19 than that we'll certainly post it on the website,
20 right on the front, so you can see it.

21 CHAIRMAN KHOURI: Yeah. I guess
22 probably most everyone here knows, if you just go

1 on your -- Google OPM and it will come up
2 immediately. It will say status, you click
3 status, and they'll tell you what the work
4 schedule is for the day.

5 COMMISSIONER MAFFEI: So two hours or
6 less delay we're on time?

7 CHAIRMAN KHOURI: We'll be here.

8 COMMISSIONER MAFFEI: With reasonable,
9 you know, with --

10 COMMISSIONER DYE: Let's do it.

11 COMMISSIONER MAFFEI: Yeah. Okay, good.

12 CHAIRMAN KHOURI: Yup. Any other
13 comments or? Everyone agree on that? Yes, ma'am?

14 MS. DICKON: Just a separate comment.
15 Just to remind participants if there's any
16 information that needs to be submitted for the
17 record subsequent to the hearings, you have until
18 the 26th, next Friday, to do that.

19 CHAIRMAN KHOURI: Very good. Thank you
20 again for all the witnesses. They're excellent
21 and I look forward to tomorrow. So thanks again.

22 (Whereupon, at 4:00 p.m., the

1 HEARING was adjourned.)

2 * * * * *

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

1 CERTIFICATE OF NOTARY PUBLIC
2 DISTRICT OF COLUMBIA
3 I, Carleton J. Anderson, III, notary
4 public in and for the District of Columbia, do
5 hereby certify that the forgoing PROCEEDING was
6 duly recorded and thereafter reduced to print under
7 my direction; that the witnesses were sworn to tell
8 the truth under penalty of perjury; that said
9 transcript is a true record of the testimony given
10 by witnesses; that I am neither counsel for,
11 related to, nor employed by any of the parties to
12 the action in which this proceeding was called;
13 and, furthermore, that I am not a relative or
14 employee of any attorney or counsel employed by the
15 parties hereto, nor financially or otherwise
16 interested in the outcome of this action.

17

18

19 (Signature and Seal on File)

20 -----

21 Notary Public, in and for the District of Columbia

22 My Commission Expires: March 31, 2021